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09/586,742	06/05/2000	Andrew S. Van Luchene	99-091	8655

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EXAMINER

GARG, YOGESH C

ART UNIT	PAPER NUMBER
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3625

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/586,742
Filing Date: June 05, 2000
Appellant(s): VAN LUCHENE ET AL.

Carl C.K.Friedman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/31/2006 appealing from the Office action mailed 1/6/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon**6,598,026****OJHA et al.****07-2003****(9) Grounds of Rejection**

The ground(s) for rejection are reproduced below from the Final Office Action, mailed on 3/2/2004, and are provided here for the convenience of both the Appellant and the Board of Patent Appeals:

Quote: “

Response to Amendment

1. Amendment received on 10/21/2005 is acknowledged and entered. The applicant has amended claims 95-97, canceled claims 98-108 and added new claims 109-137. Currently claims 95-97, and 109-137 are pending for examination.

Election/Restrictions

2. Newly submitted claims 109-137 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 109-111 directed to a method having, inter alia, the steps of receiving buyer information by a controller, determining by the controller seller information indicative of a plurality of products offered for sale by a plurality of sellers, determining, by the controller, that the product desired to be purchased by the buyers does not match any of the plurality of products offer for ale by the plurality of sellers, receiving by controller, after the determination that no match exits, additional seller information indicative of an additional product offered for sale by a seller have a ***different utility not required by the originally presented invention including claims 95-97.***

Similarly claims 112-137 directed to a method having, inter alia, the steps of searching, by a controller , through a plurality of seller database records associated with products offered for sale by sellers, determining, based on searching, that no seller database record corresponds to the buyer information, receiving, after determination that no seller database record corresponds to the buyer information, additional buyer information defining a commitment of the buyer to purchase the desired product, wherein the additional buyer information is indicative of a quality and a maximum price associated with the desired product, creating, after the receiving of the additional buyer information, a new seller database record and determining by the controller upon the occurrence of a pre-determined event that the additional buyer information corresponds to the new seller database record ***have a different utility not required by the originally presented invention including claims 95-97.***

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, newly presented claims 109-137 which are distinct from the invention originally claimed are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

3.1. Applicant's arguments (see Remarks, pages 13-14) filed on 10/21/2005 concerning amended claims 109-137 are moot in view of the withdrawal of these claims due to election by original presentation, as analyzed above.

3.2. Applicant's arguments (see Remarks, pages 12-14) filed on 10/21/2005 concerning amended claims 95-97 have been fully considered but are (a) moot due to new grounds of rejection necessitated due to current amendment and further (b)not persuasive because the cited reference of Ojha teaches determining, based on the one or more characteristics of the item, a quality class, as analyzed below.

3.3. This is a Final rejection.

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Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.1. Claims 95-97 are rejected under 35 U.S.C. 102(e) as being anticipated by Ojha et al. (US Patent 6,598,026), hereinafter referred to Ojha.

Regarding claim 95, Ojha teaches a method, comprising:

receiving, via a computer network, seller offer information, the seller offer information comprising information indicative of a seller, an item being offered for sale by the seller, a price at which the item is being offered for sale and one or more characteristics of the item (see at least Fig.5, col.2, lines 47-62, ".....According to a specific embodiment, a web site is provided having individual private graphical user interfaces, e.g., web pages, for buyers and sellers. ... The buyer's interface allows him to search a proprietary database for current product information for a variety of products being offered for sale by a number of sellers. The product information includes, for example, the name of the seller and an ask price and/or a list price for the product as specified by the seller."). Note: Fig.5 displays the seller offer information for an IBM Laptop computer, a price at which the item is being offered for sale and also one or more characteristics, such as make, computer type, model, storage capacity, type of operating system, etc. See Fig.1 and col.8, line 49-col. line 8 which discloses the hardware environment of the invention in which the buyers [represented by the computers 122 and 124], sellers [represented by the computers /servers 108 & computers 114], server [102] communicate via Internet [106] and their websites. Seller's information is received via Internet which includes the sellers offer, that is list price or ask price, see Fig.8.);

determining, based on the one or more characteristics of the item, a quality class of the item (As per the applicant's disclosure a quality class corresponds to different levels of item quality [see specification page 12, lines 3-4] and Ojha also teaches searching a proprietary database and sorting out the products by different levels of quality before presenting them on a graphical interface [see Fig.5 and col.37-45]. Ojha shows sorting out and presenting the products having different characteristics, that is model numbers, storage capacities, operating systems, etc. and prices and sorting them out from lowest quality, as represented by the lowest price of \$2198.99 to the highest quality level represented by the highest price of \$4152.28.

receiving buyer offer information, the buyer offer information indicative of a buyer, an item the buyer desires to purchase, a price the buyer is willing to pay for the item the buyer desires to purchase, and a desired quality class of the item (see at least col.3, lines 6-21, "For each product saved in the shopping list a bid button is provided, activation of which causes a bid interface to be presented by which the buyer may submit a non-binding bid to the seller of that particular product. Alternatively, the bid interface may be in the shopping list itself. According to a specific embodiment, the bid is made available to a number of different sellers offering the same product. Using the shopping list, the buyer may make a number of bids for the same or different products to a number of different sellers simultaneously. "). Submitting of non-binding bids by the buyer corresponds to receiving offer. See also col.4, lines 49-67 and col.5, lines 40-67 [teaches receiving conditional purchase offers from buyers with an offer price for a desired product]. See also col.15, lines 16-19 which teach receiving buyer details including e-mail address, and col.19, lines 5-11 discloses receiving the buyer's payment and shipping information from a database of previously collected information concerning the buyer. Col.9, lines 28-26 and Fig.4 shows the form on which the buyer can indicate a price he wants to pay for an item he wants to purchase and a quality class in the form of Model-Thinkpad 600 by specifying varying degrees of specificity and product criteria. Denoting the desired model with product specificities such as Thinkpad 600 denotes the level of the quality of Laptop computer the buyer is looking for.)

receiving credit card account information associated with the buyer (see at least col.21, lines 35-39, "....a credit cardaccount may be requested before a party is allowed to negotiate..");

storing the seller offer information (see at least col.11, lines 5-8, " ..Activation of HTML text describing a product entry in the shopping list of interface 700 results in presentation of an interface 800 [fig.8] which provides information about all merchants offering the particular product for sale through the transaction site..." and buyer offer information (see at least, " col.10, lines 8-24, "a buyer can create and simultaneously maintain as many

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shopping lists as desired.... ". Note: The shopping lists stores the buyer's offer information and col.19, lines 5-11 discloses receiving the buyer's information from a database of previously collected information concerning the buyer); determining, via a processor, whether the item desired for purchase by the buyer and the item being offered for sale by the seller correspond (see Ojha at least, col.4, lines 49-67, "*...Thus, the present invention provides methods and apparatus for facilitating a transaction between a buyer and one of a plurality of sellers via the Internet. Product information relating to a plurality of products meeting product criteria specified by the buyer is presented via the Internet. One of the plurality of sellers is associated with each of the products. A first bid from the buyer for a first one of the plurality of products is made available via the Internet to a first seller associated with the first product. A first bid response is presented via the Internet to the buyer.* ", and col.8, line 49-col.9, line 18 which disclose the hardware/software that is used to implement the computerized transactions via Internet. Also, see col.9, lines 19-56 and col.14, lines 23-37. Note: The step of, after receiving the buyer's request for a product finding a seller meeting the buyer's product criteria and then getting a offer in response includes the claimed step of determining whether at least one item desired for purchase by a buyer and at least one item being offered for sale by a seller correspond.);

Regarding claim 96, Ojha discloses determining, that the item desired for purchase by the buyer and the item being offered for sale by the seller do not correspond and further comprising providing the buyer an opportunity to commit to buy the item desired for purchase by the buyer if a corresponding item being offered for sale can be found at a later time (see at least Figs. 2, 2a, col.9, lines 10-18, " *FIG. 2 is a flowchart 200 illustrating facilitation of a transaction according to a specific embodiment of the invention. FIG. 2a is a flowchart illustrating a multi-step negotiation between a buyer and a seller (see 214 of FIG. 2) according to a more specific embodiment of the invention. FIGS. 3-18 are a series of graphical user interfaces which will be used to illustrate the transaction process of FIGS. 2 and 2a.* ", and col.18, lines 6-23, "*Where the seller's response is a counteroffer (254), the counteroffer price appears as a modified ask price in both the merchant's bid list of interface 1100 and the buyer's shopping list of interface 900 as shown in FIGS. 14 and 15, respectively. According to a specific embodiment, entries in the shopping list of interface 900 for which a response has been received from the seller are highlighted in a contrasting color as shown. Where the buyer does not accept the seller's counteroffer, he may adjust his bid by entering a new bid price as shown in FIG. 16. By activating the "Bid" button for that entry in his shopping list the buyer then submits an adjusted bid (258). Note that because the bid has been adjusted, it is treated like a new bid and the entry is no longer highlighted. Alternatively, the buyer may terminate negotiations with the seller at any time (260). In any case, where the buyer and seller have not yet agreed on a price (216), additional rounds of negotiating may take place as described above.* ". Also see col.11, line 35-col.13, line 16. From the above excerpts it is clear that when the buyer, in Ojha, in response to the seller's list price bids a price lower than the list price for a specific desired product the item desired for purchase by the buyer and the item being offered for sale by the seller do not correspond. Further, when the system allows the buyer to submit a bid indicating a length of time that the bid is good till canceled by the buyer [see col.11, lines 35-46] and allows the sellers to either accept the bid or submit a counteroffer at a later time [so long the buyer does not cancel the bid] for the buyer to accept the counter offer corresponds to the applicant's claimed limitation providing the buyer an opportunity to commit to buy the item desired for purchase by the buyer if a corresponding item being offered for sale can be found at a later time .);

Regarding claim 97, Ojha teaches charging the credit card account associated with the buyer the price at which the at least one item is being offered for sale (See at least col.21, lines 30-40 which discloses consummating the deal and using a payment identifier, such as credit card to do so); and

crediting the seller an amount based on the price at which the at least one item is being offered for sale (see at least col.6, lines 5-10 and 21, lines 36-40 which teaches paying/crediting the seller using the payment identifier, which could be a credit card or a billing account). "

Unquote:

(10) Response to Argument

(i) Applicant argues (see Brief, page 18-19, " Ojha fails to teach or suggest: determining, based on the one or more characteristics of the item, a quality class of the item (claims 95-97).

Examiner respectfully disagrees primarily for the same reasons as provided in the Final office action mailed on 1/6/2006 and reproduced above. Applicant's specification discloses that a quality class corresponds to different levels of item quality [see specification page 12, lines 3-4]. The specification does not teach categorically that the quality class does not depend upon characteristics like models, storage capacities, operating systems, price etc. say for a computer product. Ojha does teach determining quality classes of item for each laptop computer based upon the product characteristics when it sorts out and presents them, as shown in Fig.5 on a graphical interface. In order to order to present the laptops in an arranged manner as shown in Fig.5, the system determines their characteristics, such as models, Hard disk capacity, memory range, inclusion of DVD operation, and price and after determining these characteristics only the laptops are presented at different levels of quality class starting from the lowest quality class priced at \$2198.99 to the highest quality class represented by the highest price of \$4152.28.

(ii) Applicant argues (see Brief, page 19-20), “ Ojha fails to teach or suggest: wherein it is determined that the item desired for purchase by the buyer and the item being offered for sale by the seller do not correspond (claim 96).

The applicant argues (see page 20, lines 18-22) that the claim limitation, “wherein it is determined that the item desired for purchase by the buyer and the item being offered for sale by the seller do not correspond ” implies that the item buyer is looking for is not available at that time and therefore Ojha does not disclose the limitations of claim 96. Examiner respectfully disagrees. Examiner has reviewed the applicant's disclosure and the original claims as filed on 6/5/2000 and the portions of specifications as indicated by the applicant in the appeal brief supporting claim 96 (see page 10) and could not find support for this limitation, that is determining ***if the desired product is unavailable***. The original disclosure and the applicant's invention is directed to matching sellers' offers with the buyer's offer and not for checking if the product is available or not. The offers may not match in spite of the availability of material because the terms of sellers' offers may not match with the buyer's terms. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the item buyer is looking for is not available at that time) are not recited in the rejected claim.

Further, Ojha discloses determining that the item desired for purchase by the buyer and the item being offered for sale by the seller do not correspond when the buyer's offer to buy does not correspond to the seller's offered price (see at least Figs. 2,2a, col.9, lines 10-18, “ FIG. 2 is a flowchart 200 illustrating facilitation of a

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transaction according to a specific embodiment of the invention. FIG. 2a is a flowchart illustrating a multi-step negotiation between a buyer and a seller (see 214 of FIG. 2) according to a more specific embodiment of the invention. FIGS. 3-18 are a series of graphical user interfaces which will be used to illustrate the transaction process of FIGS. 2 and 2a. ", and col.18, lines 6-23, "Where the seller's response is a counteroffer (254), the counteroffer price appears as a modified ask price in both the merchant's bid list of interface 1100 and the buyer's shopping list of interface 900 as shown in FIGS. 14 and 15, respectively. According to a specific embodiment, entries in the shopping list of interface 900 for which a response has been received from the seller are highlighted in a contrasting color as shown. Where the buyer does not accept the seller's counteroffer, he may adjust his bid by entering a new bid price as shown in FIG. 16. By activating the "Bid" button for that entry in his shopping list the buyer then submits an adjusted bid (258). Note that because the bid has been adjusted, it is treated like a new bid and the entry is no longer highlighted. Alternatively, the buyer may terminate negotiations with the seller at any time (260). In any case, where the buyer and seller have not yet agreed on a price (216), additional rounds of negotiating may take place as described above. "

Also see col.11, line 35-col.13, line 16. From the above excerpts it is clear that when the buyer, in Ojha, in response to the seller's list price bids a price lower than the list price for a specific desired product the item desired for purchase by the buyer and the item being offered for sale by the seller do not correspond).

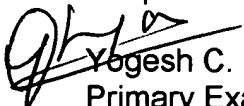
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

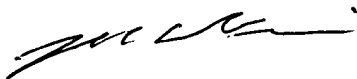
Respectfully submitted,



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